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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/009,169	12/07/2001	Takahiro Kitano	2001-1648A	8536
513	7590	04/30/2004	EXAMINER	
WENDEROTH, LIND & PONACK, L.L.P.			PADEN, CAROLYN A	
2033 K STREET N. W.			ART UNIT	
SUITE 800			PAPER NUMBER	
WASHINGTON, DC 20006-1021			1761	

DATE MAILED: 04/30/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/009,169

Examiner

Carolyn A Paden

Applicant(s)

KITANO ET AL.

Art Unit

1761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 05 April 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-3,5-15,17,18,20-22,24-27 and 29-31 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-3,5-15,17-17,20-22,24-27,29-31 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-3, 5-15, 17,18,20-22,24-27, 29-31 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kondo (5,304,389) for reasons of record used in rejecting the claims under 35 USC 102 and as further evidenced by Bailey's.

The claims appear to differ from Kondo in the recitation that the fat have a particular SFI at 2 different temperatures. Kondo teaches the SFI value at the high temperatures at example 4, lines 24. But Kondo also uses more than one fat source. At column 3, lines 3 and 9, other fats are listed. Baileys is relied upon to show the melting point of coconut, cocoa and palm kernel oil. Even though the specific high and low SFI values are not shown in Kondo, one of ordinary skill in the art would have anticipated that the SFI values of Kondo fall within the ranges set forth in the claims because the high and low temperature SFI values fall on both sides of the melting point of the

fat. Thus it would have been obvious to expect that the oil of Kondo to have the particular melting characteristics of the claims.

Applicant argues that the particle size in Kondo is different from that of the claims and that the particle size in Kondo has a wider range than that set forth in the claims. This has been considered but is not persuasive. The particle size in Kondo still falls within the range set forth in the claims. Further there is not requirement that there be any sugar particle of near 1mm in the wide range of applicants present claims. Applicant urges that Kondo does not teach sugar particles that are more than 50 um. This is disagreed with as note the abstract. The aspect of a "transparent" appearance similar to a glaze is not a part of the claims.

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-3,5-15,17,18,20-22,24-27,29-31 are rejected under 35 U.S.C. 102(b) as being anticipated by Kondo (5,304,389) for reasons of record and as further evidenced by Bailey's.

Applicant has amended the claims to set forth that the fat has a particular SFI at 2 different temperatures. Kondo teaches the SFI value of that at the high temperatures at example 4, lines 24. But Kondo also uses more than one fat source. At column 3, lines 3 and 9, other fats are listed. Baileys is relied upon to show the melting point of coconut, cocoa and palm kernel oil. Even though the specific high and low SFI values are not shown in Kondo, one of ordinary skill in the art would have anticipated that the SFI values of Kondo fall within the ranges set forth in the claims because the high and low temperature SFI values fall on both sides of the melting point of the fat and the SFI values at the high temperature is specifically set forth in Kondo. Thus one of ordinary skill in the art would have anticipated that the oil of Kondo had the particular melting characteristics of the claims.

Applicant argues that the particle size in Kondo is different from that of the claims and that the particle size in Kondo has a wider range than that set forth in the claims. This has been considered but

is not persuasive. The particle size in Kondo still falls within the range set forth in the claims. Further there is not requirement that there be any sugar particle of near 1mm in the wide range of applicants present claims. Applicant urges that Kondo does not teach sugar particles that are more than 50 um. This is disagreed with as note the abstract. The aspect of a "transparent" appearance similar to a glaze is not a part of the claims.

The rejection of the claims of Beeson has been dropped.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be

calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Carolyn A Paden whose telephone number is (571) 272-1403. The examiner can normally be reached on Monday to Friday from 7 am to 3:30 pm.


If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano, can be reached on (571) 272-1398 or by dialing 571-272-1700. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private

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PAIR system, contact the Electronic Business Center (EBC) at 866-
217-9197 (toll-free).


CAROLYN PADEN 4-28-2004
PRIMARY EXAMINER 1761
GROUP 1300